Supreme Court, U.S.
FILED

(1)

97 • 213 AUG 4 1997

No. OFFICE OF THE CLERK

In The

Supreme Court for the United States

October Term, 1996

BRUCE BUCHBINDER; ELAINE BUCHBINDER
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

BRUCE BUCHBINDER
ELAINE BUCHBINDER
1178 Via Ferrari Drive
San Jose, California 95122
(408) 279-4054
Petitioner In Pro Se

58 pp

QUESTIONS PRESENTED

1. What is the standard of pleading that must be met by a Pro Se Petitioner, petitioning the United States Tax Court, in order that the petition be considered reasonably in compliance with the United States Tax Court's Rules of Practice and Procedure, Rule 34(b)(4) and 34(b)(5), which require that the petition contain separately enumerated "clear and concise assignments of error and statements of facts," and whether the herein amended petition filed by Bruce Buchbinder and Elaine Buchbinder reasonably complied with the provisions of said Rule?

2. What is the standard that must be met by the United States Tax Court in order to fulfill petitioners right to the scope of review mandated by Congress pursuant to Title 5 United States Code Section 706, which requires, among other things, that the Tax Court hold unlawful and set aside agency action, findings, and conclusions found to be: arbitrary, and otherwise not in accordance with law; contrary to constitutional rights, powers, privileges, or immunities; in excess of statutory authority; not in observance of legal procedure; unsupported by substantial evidence; unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court (here the Tax Court); and in making these determinations, the Tax Court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error, and whether the petitioners herein have been substantially deprived of these remedies, when petitioners have clearly enunciated and invoked each and every element of Section 706 with recitals of facts and assignments of error to said Tax Court.

3. Whether the arbitrary dismissal of a litigant's cause of action before the courts, especially an action being brought

by a Pro Se Litigant, is the harshest sanction that can be imposed by the courts, and whether such a sanction can rise to the level of a denial of proper Due Process, and Right to meaningfui access to the courts?

4. Whether a court imposed monetary sanction for an allegation of misconduct that never actually took place, coupled with a subsequent sanction of dismissal, would rise to the level of judicial usurpation, giving proprietorial necessity for this Court to invoke its appellate jurisdiction of review in order to curb further usurpations of this nature?

5. Whether an individual Pro Se Litigant has a Ninth Amendment right to refuse to pay a court imposed sanction for an allegation of misconduct that never actually took place, barring being denied access to the courts?

6. Whether the Due Process Clause of the Fifth Amendment requires that a court order be subject to constitutional review in a civil proceeding when the order has but a "frivolous pretense to validity" because it was issued arbitrarily and capriciously for non-payment of sanctions for an allegation of misconduct that never actually took place?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
Cases	v
Constitution, Statutes and Codes	vii
Congressional Record	vii
PRELIMINARY STATEMENT	1
OPINIONS BELOW	3
JURISDICTION	3
TAX COURT RULES, STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	8
REASONS FOR GRANTING WRIT	13
This Court must determine if the Tax Court is exceeding its codified jurisdictional limits because thousands of litigants are affected annually	13
Tax Court's duty imposed by the APA	15
Petitioners left without remedy	15
Standards of due process insisted upon by the United States Supreme Court	16
Invoking Obsta Principiis, this Court must exercise its supervisory powers to resolve far-reaching dilemmas in judicial proceedings	17
Other Important Issues	20
CONCLUSION	21

SUPPLEMENTAL APPENDIX

	Page:
A. Order of Ninth Circuit Court of Appeals	A-1
B. Order of Dissmissal and Decision of U.S. Tax Court	B-1
C. Bench Opinion by Special Trial Judge Daniel J. Dinan, Docket No. 17294-96 October 28, 1996.	C-1
D. Petitioners' Amended Petition for Redetermination of Erroneous Conclusion of Income Tax Deficiency And/Or Liability.	D-1

TABLE OF AUTHORITIES

Cases

Page

A. Dallacroce v. Commissioner, 83 T.C. 269 (1983) 18
Almon v. Morgan County, 245 Ala 241, 16 So 2d 511 17
Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965) 16
Avery v. Commissioner, 574 F.2d 467 (9th Cir. 1978) 19
Billy Taylor v. Commissioner, 85-2 USTC P9678 . . . 19
Boyd v. United States, 116 U.S. 616, 635 (1886) . . . 17
Brushaber v. Union Pacific Railroad Company, 240 U.S. 1, 36 S. Ct. 236 (1915) 10,13
Central of Georgia R. Co. v. Wright, 207 U.S. 127, 52 L. Ed. 134, 28 S. Ct. 47 17
Cook v. Tait, 265 U.S. 47, 44 S.Ct. 444 (1924) 13
Eisner v. Macomber, 252 U.S. 189, 206, 40 S. Ct. 189 (1920) 10,13
Emerson v. Hughes, 90 A2d 910, 34 AlR 2d 539 . . . 17
Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 84 L. Ed 656, 60 S. Ct. 437 17
Gilmore v. Lynch, 319 F. Supp. 105 (DC Cal. 1970) Affd. 404 U.S. 15, 30 L. Ed. 2d 142, 92 S. Ct. 250 21
Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. lOll, 25 L. Ed. 2d 287 (1970) 16
Haines v. Kerner, 404 U.S. 519 (1972) 3
Hanna v. Larche, 363 U.S. 420, 4 L. Ed. 2d 1307, 80 S. Ct. 33 17

Hecht v. Monaghan, 307 ny 461, 121 NE2d 421 17
Joint Anti Fascist Comm. v. McGrath, 341 U.S. 123, 168, 71 S. Ct. 624, 95 L. Ed. 817 (1951) 16
Juster Bros. v. Christgau, 214 Minn 108, 7 NW 2d 501 17
Llorente v. Commissioner, 649 F.2d 152 (2nd Cir. (1981) 19
Londoner v. Denver, 210 U.S. 373, 52 L. Ed. 1103, 28 S. Ct. 708 17
Morgan v. United States 298 U.S. at 480 16
Morgan v. United States, 304 U.S. 1, 82 L. Ed. 1129, 58 S. Ct. 773 17
Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S. Ct. 673 aff. reh. 158 U.S. 601, 15 S. Ct. 912 (1895) 10, 13
Potito v. Commissioner, 534 F.2d 49, 51 (5th Cir. 1976) cert den 429 U.S. 1039 19
Price v. Johnson, 344 U.S. 266 (1948) 3
Randall v. Patch, 108 A 97, 8 ALR 65 17
Scherping v. Commissioner, 147 F.2d 478 (8th Cir. 1984) 19
Stanton v. Baltic Mining Co., 240 U.S. 103, 112, 36 S.Ct. 278 (1916) 13
United States v. MacCollom, 426 U.S. 317, 49 L.Ed. 2d 666, 96 S.Ct. 2086 (1976) 21
Welch v. Helvering, 290 U.S. 111, 115 19
William E. Peck and Co. v. Lowe, 247 U.S. 165, 172, 173, 38 S.Ct. 432 (1918) 13
Wong Yang Sung v. McGrath, 339 U.S. 33, 94 L. Ed. 616, 70 S. Ct. 445 17

Constitution, Statutes and Codes

Article III, Section 2, Clauses 1, 2 4
Amendment I of the United States Constitution 8
Amendment V of the United States Constitution 8
Amendment IX of the United States Constitution . . . 8
P.L. 89-554, § 1, 80 Stat. 398 7
5 U.S.C. § 554 . . . . . 5, 20
5 U.S.C. § 554(a) 5
5 U.S.C. § 556 . . . . . 5, 6
5 U.S.C. § 557 6
5 U.S.C. § 702 . . . . . 5, 20
5 U.S.C. § 703 . . . . . 5,6, 20
5 U.S.C. § 706 . . . . . 5,6, 14, 15, 20, 21
26 U.S.C. § 6213 8
26 U.S.C. § 6214 5
26 U.S.C. § 7441 15
26 U.S.C. § 7483 8
28 U.S.C. § 1254 (1) 4
28 U.S.C. § 2072 14
Titles 5, 7, 11, 19, 20, 25, 28, 31, 38, 42, 46, 48, 32, 34 12

Congressional Record

Congressional Record, Proceedings and Debates of the 78th Congress First Session, Volume 89 Part 2, March 2, 1943, To April 5, 1943 (Pages 1459 to 2940) At Page 2580 . . . . . 7, 13

Other References

WHAT, IN VIEW OF SUPREME COURT, CONSTITUTES THE CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS, 52 L. Ed. 2d 779 (Annotated) 21

In The

Supreme Court for the United States

October Term, 1996

BRUCE BUCHBINDER; ELAINE BUCHBINDER

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PRELIMINARY STATEMENT

Petitioner, Bruce Buchbinder and Elaine Buchbinder, who are not formally trained in the complexities of legal practices, hereby petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, for the purpose that a supervisory opinion may issue from this Honorable Court, reviewing the actions of the United States Tax Court, and the United States Court of Appeals for the Ninth Circuit. Said Tax

Court actions are consistent with a long train of abuse in harmfully neglecting its procedural duty to lawfully act, as the appellate tribunal it is authorized to be under the Congressional enactments of the United States Congress, over administrative adjudications of the Internal Revenue Service; an executive agency of the United States Government.

The failure of the United States Tax Court to so act in accordance with law ultimately provided refuge for the Internal Revenue Service to similarly avoid its procedural duty to adjudicate lawfully and properly an income tax deficiency determination according to the revenue laws of the United States.

The relief sought results from the subsequent ruling of the Tax Court, which has effectively and substantially denied petitioners constitutionally protected right to procedural and substantive due process; including the right to the meaningful opportunity to prepare and defend against the notice of deficiency issued by the Internal Revenue Service, which was properly challenged according to federal law.

Further in this case, the Buchbinders have been severely punished for an allegation of misconduct before the Ninth Circuit Court of Appeals, which allegation of misconduct never actually took place, and the punishment is so extreme that the Buchbinders have been substantially denied access to meaningful judicial review of their case.

In the past few years the American Public has begun to question the validity of the taxing powers being imposed upon them. These questions have brought a hysterical response from the IRS agency who administers these tax provisions.

Through the Croasman Memorandum and IRS seminars conducted for the benefit of Federal Court Judges, these Judges have become accustomed to turning their face against any politically unpopular argument involving taxation. It has now become judicially expedient to merely deem any unpopular tax argument a frivolous and groundless argument, and dispense

with the case without any semblence of judicial review, and it is this expedience the petitioners have found themselves the victim of.

The Petitioners, in appearing pro se, rely on *Haines v. Kerner* (1972), 404 U.S. 519, *Price v. Johnson* (1948), 344 U.S. 266, plus many others, in that "pro se," "pro per" litigants are not held to the same standards as attorneys, appearing on 'appeal' in this Court.

OPINIONS BELOW

The Order of the Court of Appeals for the Ninth Circuit has been reported. It is copied and attached to the appendix hereto, APP. A, *infra.* The Order of Dismissal and Decision of the United States Tax Court has been reported. It is copied and attached to the appendix hereto, APP. B, *infra.*

JURISDICTION

On or about May 16, 1996, the Director of the Fresno, California IRS Service Center, issued to Bruce and Elaine Buchbinder an alleged notice of deficiency for the year 1982.

The Buchbinders filed a timely petition in the United States Tax Court on August 7, 1996. On September 26, 1996 the Commissioner filed a Motion to Dismiss for Failure to State a Claim or alternatively for petitioners to amend their petition.

On October 2, 1996, the Tax Court filed an Order ordering the petitioners to file an amended petition. The Buchbinders filed an amended petition on October 14, 1996, copied and attached to appendix hereto, APP. D.

On October 28, 1996, the Tax Court arbitrarily granted Commissioner's Motion to Dismiss, and arbitrarily and

capriciously dismissed the instant case for failure to state a claim and because in the court's view the petition did not satisfy the requirements of Rule 34(b)(4) and (5), the Court stating in its Bench Opinion that the Buchbinders were raising frivolous and groundless arguments. Bench Opinion is copied and attached to appendix hereto, APP. C. The final order of dismissal and decision in the Tax Court was entered on December 13, 1996.

The Buchbinders timely filed a notice of appeal to the Ninth Circuit Court of Appeals on January 7, 1997. The Commissioner by Motion argued for dismissal of the Buchbinders Appeal for failure of the Buchbinders to pay sanctions from a previous Ninth Circuit appeal numbered CA 92-70114. The order of the Court dismissing the appeal was entered on May 12, 1997 , with no further filings permitted.

Jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. §1254(1).

Authority to proceed in this Court is by authority of the people of the united States by their Constitution, Article III Section 2, Clauses 1 and 2, in which this Court has appellate jurisdiction.

TAX COURT RULES, STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Tax Court Rules of Practice and Procedure:

Rule 34 PETITION

Specifically:

Rule 34(b) Content of Petition in Deficiency and Liability Actions.

Rule 34(b)(4) of the Rules of Tax Court provides:

> (4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the

determination of the deficiency or liability. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignment of errors shall be deemed to be conceded. Each assignment of error shall be separately lettered.

Rule 34(b) (5) of the Rules of Tax Court provides:

(5) Clear and concise lettered statements of the facts on which petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

26 U.S.C. Subtitle F § 6214, Determination by Tax Court
Title 5 United States Codes (Government organization and Employees)

§554 Adjudications
§556 Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.
§702 Right of review
§703 Proper Venue for Court of Review
§706 Scope of review

SPECIFICALLY

§554(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved--

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court; [In pertinent part]

§702 **Right of review**

A person suffering legal wrong because of agency action, or adversely affected or aggrieved

by agency action within the meaning of a relevant statute, is entitled to judicial review thereof... [In pertinent part]

§703 **Form and venue of proceeding**

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgements or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction... [In pertinent part]

§706 **Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo

by the reviewing court.

> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. [In pertinent part, Emphasis added]
> (Sept. 6, 1966, P.L. 89-554, §1, 80 Stat. 393).

Congressional Record, Proceedings and Debates of the 78th Congress First Session, Volume 89 Part 2, March 2, 1943, to April 5, 1943 (pages 1459 to 2940) at page 2580 where it is clearly stated:

> "The sixteenth amendment authorizes the taxation of income 'from whatever source derived'--thus taking in investment income--without apportionment among the several states.' The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the States of taxes laid on income whether it be derived from one source or another. So the amendment made it possible to bring investment income within the scope of a general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income.
>
> The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of the tax. (Emphasis added, Congressional Record

78th Congress, Volume 89--Part 2, page 2580).

Amendments to the United States Constitution
Amendment I of the United States Constitution provides in pertinent part:

> Congress shall make no law respecting . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V of the United States Constitution provides in pertinent part:

> No person shall.... be deprived of life, liberty, or property, without due process of law;

Amendment IX of the United States Constitution provides in pertinent part:

> The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

STATEMENT OF THE CASE

The Ninth Circuit Court of Appeals had jurisdiction pursuant to Title 26 U.S.C. § 7483. The Tax Court had jurisdiction pursuant to Title 26 U.S.C. § 6213, although Petitioner has vigorously contested the jurisdiction of the Tax Court throughout the course of these proceedings.

The Buchbinders submitted a timely filed petition and an amended petition to the United States Tax Court. In their original petition the Buchbinders set forth nine (9) clear and concise separately enumerated statements of facts. The Buchbinders set forth eleven (11), clear and concise separately enumerated assignments of each and every error they alleged

was committed by the Commissioner. It was clearly stated by the Buchbinders in their original petition that their action was not taken for the purpose of delay, and that they were not liable for the payment of the alleged tax. In their Amended Petition the Buchbinders set forth twenty-four (24) clear and concise separately enumerated statements of facts, at pages 9 thru 16. The Buchbinders set forth twelve (12) clear and concise separately enumerated assignments of each and every error they alleged was committed by the Commissioner, at pages 6 thru 9. It was clearly stated by the Buchbinders at Item M-1 that their action was not taken for the purpose of delay, and at Item O-1 it was clearly stated that they were not liable for the payment of the alleged tax. The Amended Petition appended hereto at APP. D.

The Commissioner failed to make a responsive pleading to the Buchbinders original petition, instead, the Commissioner contended that the petition was not a proper petition but rather a statement making frivolous constitututional arguments, and as such, was without merit and not requiring a responsive pleading; the Commissioner moving for dismissal alternatively requesting the court to order petitioners to amend their petition to conform to Tax Court Rule 34(b).

The Tax Court entered its Bench Opinion, concluding that: "The petition and amended petition filed in this case do not satisfy the requirements of Rule 34 (b)(4) and (5). They do not assign error or allege facts in support of any justiciable claim." The Tax Court further concluded that "they contain nothing but tax protester gibberish ...", and awarded the United States $7,500.00 in damages, See Bench Opinion , APP. C, page 10.

The Buchbinders timely filed an appeal to the Ninth Circuit Court of Appeals. However, this appeal was arbitrarily and capriciously dismissed on Respondent's Motion to Dismiss for failure to pay sanctions in a previous case. The misunderstandings revolving around the issue of the sanctions, leading to the dismissal of the instant case, have been briefed extensively by the Buchbinders in previous Supreme Court cases (at Docket 94-620, 95-483, and 95-778). In these cases, the

Buchbinders explained that they had received previously issued notices of deficiency from the Commissioner of Internal Revenue. In the first deficiency action the basis for the notice of deficiency related to the treatment of a forward contract and certain research and development expenditures which the Buchbinders claimed on their 1981 federal income tax returns and which were disallowed by the IRS. Nothing about that first case involved "**WAGES**". In a subsequent deficiency action, leading to this appeal, the basis for the notice of deficiency related to an income tax deficiency and penalty for the year 1982.

In the first deficiency action the Buchbinders challenged the validity of the Notice arguing that this was an unapportioned direct tax being imposed upon their personal property. The Buchbinders argued that the rule of apportionment for direct taxes applied to personal property as well as real property *Pollock v. Farmers' Loan Trust Co.*, 157 U.S. 429, 15 S.Ct. 673, aff. reh., 158 U.S. 601, 15 S.Ct. 912 (1895), and that the dividends received from invested capital was as much personal property as the invested capital *Pollock*, supra.

The Buchbinders further argued that after the ratification of the Sixteenth Amendment it was held that nothing in the Amendment repudiated the holding in *Pollock*, that a tax on real or personal property was direct and must be applied by the rule of apportionment *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 36 S.Ct. 236 (1915). That the term income in the Sixteenth Amendment cannot be interpreted so as to modify or repeal the original Articles of the Constitution, Congress cannot conclude what is and what is not income, and it has now become the duty of the Courts to determine on a case by case basis whether the income tax is operating as a "DIRECT TYPE TAX" or whether it is operating as an "INDIRECT TYPE TAX," giving no regard to form, but giving due regard to truth and substance *Eisner v. Macomber*, 252 U.S. 189, 206, 40 S.Ct. 189 (1920).

The Tax Court in the first case arbitrarily deemed the Buchbinders arguments to be *tax-protester gibberish,*[1] without any finding that the notice of deficiency was valid, without jurisdictional review, without review of agency authority, or review of the constitutional issues, and upheld the Commissioner's deficiency allegation.

The Buchbinders timely appealed to the Ninth Circuit Court of Appeals for a de novo review, making the same argument as above. The Commissioner in its brief argued that the Buchbinders were making tax-protester arguments that *"WAGES ARE NOT INCOME,"* however the Commissioner's attorney knew, or should have known, full well that wages were not even an issue in that case, nor was that proposition ever brought before the court.

For whatever unknown reason the Ninth Circuit adopted the Commissioner's argument, upheld the Tax Court decision, and sanctioned the Buchbinders for making a frivolous argument, which the Buchbinders never actually made. The Buchbinders refused to pay the sanctions and instead petitioned this Court for a Writ of Certiorari, and ultimately for a Rehearing.

In the subsequent Notice of Deficiency, which has led to this appeal, the Commissioner issued the deficiency notice for additions to tax under IRC 6653 (a) (1), 6653 (a) (2), and 6661, but involved the same tax issues as the first Notice of Deficiency. The Buchbinders again timely petitioned the U.S. Tax Court contending by motion that if the income tax is

---

[1] Here the Buchbinders would point out that they had petitioned the Tax Court as petitioners, and had submitted their briefs to the Appeal Court as appellants. The term [Taxpayer] is a term of art, and without any clearly defined criteria as it relates to specific subject matter, is nothing more than a meaningless buzz word. Similarly the term [Tax-Protester] was used loosely and extremely by the Commissioner throughout this litigation, with no more intention than to create hyperbole intended to excite the senses of the readers.

operating as an "INDIRECT TYPE TAX," as the Commissioner would like them to believe, then the Commissioner has never identified which activity is the Revenue Law taxable activity the Buchbinders were involved in, nor has he ever identified which tax was due of the some 85+ internal revenue taxes authorized in the Internal Revenue Code, nor has he ever identified which revenue law of the 15 or so different revenue laws is applicable, upon which a "proper" and "valid" deficiency might have been based on to begin with. What he has identified relates to some function of the Bureau of Alcohol, Tobacco and Firearms. The Buchbinders contending that they had NEVER been involved in any BATF activities, or in any activity relating to Titles 5, 7, 11, 19, 20, 25, 28, 31, 38, 42, 46, 48, 32 and 34, and their related taxable activities. Therefore, the Buchbinders contending the Commissioner had no jurisdiction to begin with in the instant case, and was completely and totally outside his jurisdiction and area of authority. Therefore, because of this procedural error, the Buchbinders contending personam jurisdiction had been invoked by false pretense.

However, in spite of all this the Tax Court would not proceed to trial, instead capriciously and arbitrarily dismissing the case on the pretext that petitioner had failed to state a claim and failed to comply with Rule 34 (b)(4) and (5). This frivolous decision was arrived at in spite of the fact that petitioner clearly stated a claim in their petition, and in their diligent good faith efforts to fully comply with Rule 34 (b)(4) and (5), notwithstanding their original petition, amended their petition.

Again, the Buchbinders appealed to the Ninth Circuit Court of Appeals for a de novo review, and again the Commissioner by motion sought to have the appeal dismissed on the contention that the Buchbinders had failed to pay the sanctions imposed by the Ninth Circuit in the Buchbinders first appeal.

On or about May 12, 1997, the U.S. Court of Appeals entered its order arbitrarily dismissing petitioners cause of action on the pretext of a misapplied sanction leaving the onus that petitioners had not stated a claim nor complied with Tax Court Rules 34(b) (4) and (5). See Ninth Circuit Order, APP.A.

REASONS FOR GRANTING WRIT
This Court must determine if the Tax Court is exceeding its codified jurisdictional limits because thousands of litigants are affected annually.

The judgement of the United States Tax Court, the subsequent affirmation by the Ninth Circuit Court of Appeals, and the subsequent effects that will be brought upon Bruce Buchbinder and Elaine Buchbinder, is contrary to the express holdings of the United States Supreme Court in: Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S.Ct. 673, aff. reh., 158 U.S. 601, 15 S.Ct. 912 (1895); Brushaber v. Union Pacific Railroad Company, 240 U.S. 1, 36 S.Ct. 236 (1915); Stanton v. Baltic Mining Co., 240 U.S. 103, 112, 36 S.Ct. 278 (1916); William E. Peck and Co. v. Lowe, 247 U.S. 165, 172, 173, 38 S.Ct. 432 (1918); Eisner v. Macomber, 252 U.S. 189, 206, 40 S.Ct. 189 (1920); Cook v. Tait, 265 U.S. 47, 44 S.Ct. 444 (1924); and Congress' own clear and unambiguous statement in the Congressional Record at: Congressional Record, Proceedings and Debates of the 78th Congress First Session, Volume 89 Part 2, March 2, 1943, to April 5, 1943 (pages 1459 to 2940) at page 2580, cited supra.

The right of the individual citizens, which make up the public of the North American continent, to effective and meaningful access to their courts, is a question of paramount and significant importance. The only means the average individual of the American public has to check government excesses, and abuse of the awesome powers of its agencies, is to bring the cause before the judges of the courts. When these judges are unwilling to effect complete and sufficient inquiries, into the agency's asserted authority and/or jurisdiction, in conjunction with the constitutional guarantees reserved by the American public, these individuals are left completely without any remedy against government excesses and abuses of limited and enumerated powers.

It has become the customary practice of Internal Revenue Service Centers and District Director's offices, to send out arbitrary accusations of liability for payment of taxes. These accusations are being disguised as notices of deficiency. This convoluted practice is being implemented by these IRS offices, to avoid being suffered with the rightful burden of proof, with respect to these unfounded accusations. The members of the public, who are receiving these arbitrary accusations, are in good faith attempting to follow the peaceful procedures offered to them in the notices, and petitioning the United States Tax Court, in a reasonable effort to peacefully resolve the matters lawfully. Unfortunately, these members of the American public, are running into insensitive Special Trial Judges on the United States Tax Court, who are more than willing to treat these petitioning individuals (members of the American public), as though they were nothing more than a bunch of mindless dupes.

Petitioners have brought to the attention of the Tax Court on separate occasions, specifically worded issues for its review; those issues went directly to the jurisdiction of the taxing agency on the matters involved, and therefore, to the jurisdiction of the Tax Court. The Tax Court denied any review or hearing on any of those issues. Further in the instant case, petitioners had attempted to bring to the attention of the Tax Court certain issues for its review. However, none of those issues could be given any review because such review was pre-empted by the presumptuous conclusion of respondent that petitioners petition was totally without merit and therefore should be dismissed. Further the Tax Court's action in this matter, on the pretext that petitioners had failed to state a claim and comply with Tax Court Rule 34(b)(4) and (5), denied any review or hearing on any of those issues, and deprived petitioners of any semblance of review as mandated by Title 5 U.S.C. § 706.

This attitude toward petitioners shown by the Tax Court is arbitrary and prejudicial. This attitude also goes against the Tax Court's duty as delegated to it through the Administative Procedures Act (APA), specifically at section 706 which mandates that Court's standards of review.

Tax Court's duty imposed by the APA

In the APA at section 706, there are given the delegated guidelines for the standard of review of the Tax Court. The first paragraph of that statute states the reviewing court shall decide "all relevant questions of law, *interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.*" (Emphasis added). Then follow the mandated guidelines. Then it states that in making those determinations so authorized to do, the court shall "review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

If the Tax Court is refusing to take jurisdiction over interpreting constitutional and statutory provisions (jurisdiction being the prime threshold issue), it cannot then determine the meaning or applicability of the terms of an agency action in any meaningful way in keeping with its mandated guidelines. While it is true that an earlier delegation of authority to the Tax Court could have arguably limited the scope of its review, since 1968 the Congress has decided that this court has an Article I status. See Title 26 U.S.C. § 7441.

The Administrative Procedure Act, Title 5 of the United States Code is the only source of protection that the American citizen has against arbitrary governmental agency actions, and if the scope of review mandated by Title 5, § 706 is sidestepped by the lower courts and viewed as meaningless, the American citizens are then stripped bare of any protection and are reduced to victims rather than American citizens.

Petitioners left without remedy

Therefore, for the reasons stated above, the petitioners are left with no adequate remedy at law for their properly brought and specifically pled issues. It cannot be contemplated by Congress to leave its citizens without the ability to make an adequate record or to have then an adequate and meaningful review of that record. Nor could Congress have intended that

those individuals not have a meaningful forum for their grievances when the government or its agents pursue those citizens with allegations of liabilities, of which only the government or its agents have the documentation for and will not release for open review.

Standards of Due Process Insisted upon By the United States Supreme Court

With respect to the elements necessary for due process to be afforded, the United States Supreme Court has consistently insisted that, the requirements of adequate notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful place and manner must be provided: Joint Anti Fascist Comm. v. McGrath, 341 U.S. 123, 168, 71 S. Ct. 624, 95 L. Ed. 817 (1951); Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965); Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970), to mention a few of the landmark decisions from the U.S. Supreme Court on this issue.

Further, in Morgan v. United States, 298 U.S. at 480, fifty suits were brought seeking to restrain the Secretary of Agriculture from fixing the maximum rates to be charged by market agencies for buying and selling livestock at the Kansas City Stockyards. The individuals brought these suits claiming deprivation of their property without due process of law. With respect to the elements of due process the Court in Morgan, supra, stated.

> [T]he "hearing" is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given. Morgan, supra, 298 U.S. at 480, 481.

Due process of law stands for protection against the arbitrary exercise of the powers of government and in its procedural aspects assures adherence to the fundamental

principles of justice and fair play Hanna v. Larche, 363 U.S. 420, 4 L. Ed. 2d 1307, 80 S. Ct. 33; Hecht v. Monaghan, 307 NY 461, 121 NE2d 421. In administrative proceedings of a judicial or quasi judicial character, the liberty and property of the citizen must be protected by the observance of the rudimentary requirements of fair play Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 84 L. Ed 656, 60 S. Ct. 437; Morgan v. United States, 304 U.S. 1, 82 L. Ed. 1129, 58 S. Ct. 773; Almon v. Morgan County, 245 Ala 241, 16 So 2d 511; Juster Bros. v. Christgau, 214 Minn 108, 7 NW2d 501.

The fundamental or essential requirement of procedural due process of law is notice and hearing, that is, opportunity to be heard either before a court or an administrative agency Wong Yang Sung v. McGrath, 339 U.S. 33, 94 L. Ed. 616, 70 S. Ct. 445; Londoner v. Denver, 210 U.S. 373, 52 L. Ed. 1103, 28 S. Ct. 708; Central of Georgia R. Co. v. Wright, 207 U.S. 127, 52 L. Ed. 134, 28 S. Ct. 47. Thus, a hearing or opportunity to be heard, before a citizen is deprived of life, liberty or property, is absolutely essential to due process Randall v. Patch, 108 A 97, 8 ALR 65; Emerson v. Hughes, 90 A2d 910, 34 AlR 2d 539.

The Tax Court below has erred grievously. And the Ninth Circuit Court has compounded the error. To remember the words of Boyd v. United States, 116 U.S. 616, 635 (1886):

> It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be Obsta Principiis.

Invoking Obsta Principiis, this Court must exercise its supervisory powers to resolve far reaching dilemmas in judicial proceedings

There are two far-reaching dilemmas that must be resolved in the instant case. The first question concerns the holding that the Tax Court made: what standard of pleading must a petitioner meet in order to be in compliance with Tax Court Rule 34(b)(4)

and 34(b)(5)?

The second question asks: does the arbitrary dismissal of a petitioners cause of action before the appellate court for misapplied sanctions constitute a denial of proper due procces and right to meaningful access to the courts?

The first question results in a real contradiction relating to the purpose for the creation of the United States Tax Court by Congress in 1924, the express intent of the Administrative Procedures Act in 1935, and the express wording of Tax Court Rule 34(b)(4) and (5), which requires nothing more than clear and concise statements of facts and assignments of error, with no further qualifications. This creates a real dilema for individuals petitioning the United States Tax Court, especially Pro Se petitioners who are expected to reasonably adhere to the rules of practice and procedure.

It would seem that the root of this problem stems from two decisions of the United States Tax Court: In A. Dallacroce v. Commissioner, 83 T.C. 269 (1983), Judge Sterrett wrote at page 280:

> As a general rule, this court will not look behind the statutory notice to examine the evidence used in making the determination... In this connection, we have observed that "the Commissioner's determination may often rest upon hearsay or other inadmissible evidence, and we know of no rule of law calling for a review of the materials that were before the Commissioner in order to ascertain whether he relied upon improper evidence..."

Then in contradiction of the above statement Judge Sterrett writes at page 283:

> Specifically, we believe that the Second Circuit's opinion clearly indicates that the court will view a deficiency determination as arbitrary and unreasonable in the absence of evidence in

> the record admissible to establish the truth of the facts asserted by the Commissioner. citing Avery v. Commissioner, 574 F.2d 467 (9th Cir. 1978); Llorente v. Commissioner, 649 F.2d 152 (2nd Cir. 1981).

A further dilemma is created for the petitioners in the United States Tax Court by the opinion written in the case of Billy Taylor v. Commissioner, 85-2 USTC P9678, in which it was stated:

> The Commissioner's determination of a deficiency is presumed correct and the taxpayer has the burden of proving it incorrect. citing Welch v. Helvering, 290 U.S. 111, 115; Potito v. Commissioner, 534 F.2d 49, 51 (5th Cir. 1976) cert den 429 U.S. 1039.
>
> Tax Court Rules have been interpreted as requiring more detailed pleadings than the Fed. R. Civ. P. citing Scherping v. Commissioner, 147 F.2d 478 (8th Cir. 1984).

The United States Congress created the Tax Court in order that individuals could have an informal forum to challenge the validity of tax assessments, this was created because of the Internal Revenue Service's then customary practice of issuing abusive tax assessments that were driving individuals into bankruptcy. If as Judge Sterrett states in Dellacroce, supra, the Tax Court cannot view the Commissioner's evidence, because the Commissioner often relies on inadmissible evidence, the Tax Court is a meaningless forum, and the rules of evidence, created for the purpose of arriving at the truth of the matter, really have no true purpose, also the requirement that the reviewing court must make its decision based upon the whole record supporting the agency's determination, is simply thrown out the window. Here the potential for abuse is beyond imagination.

If as stated in Billy Taylor, supra, the standards of pleading in Tax Court are more rigorous than in the Federal District Courts, then an individual is compelled, in order to hope to have

his case heard on the merits, to retain a seasoned trial advocate, thus, the individual's legal costs would more than likely exceed the amount of the arbitrary assessment. Again, the Tax Court would be rendered a meaningless forum for most individuals receiving notices of deficiencies. Also, viewed in light of the above reasoning who can know whether the Commissioner in fact had any evidence, or for that matter any plausible reason to issue a notice of deficiency, since no one ever gets to look at his evidence or reasoning, and what effective challenges could there be to raise?

This Court should grant certiorari in order to resolve important issues that the lower courts refuse to address, concerning issues of jurisdictional, constitutional, and factual matters, because litigants are not receiving a full and meaningful review pursuant to Title 5 U.S.C. §§ 554, 702, 703 and 706 and thereby are precluded from procedural and substantive due process.

Other Important Issues

A further important issue that bears upon the supervisory role of this High Court, is the issue of the arbitrary dismissal of petitioners cause of action before the Ninth Circuit Court of Appeals, and whether such action constitutes a denial of proper Due Process, and Right to meaningful access to the Courts.

The right of the individual citizens, which make up the public of the North American Continent, to effective and meaningful access to their courts, is a question of paramount and significant importance. The only means the average individual of the American Public has to check government excesses, and abuse of the awesome powers of its agencies, is to bring the cause before the Courts.

It is the customary practice in this American Society to settle the people's disputes with government agencies in the Courts, this case however is a classic example of how the doors to the very Courts who are sworn to protect the people are slowly being closed to the people.

An individual's constitutional right of access to the Courts has been upheld times innumerable. Perhaps the most comprehensive analysis of this issue can be found in the Annotation of *WHAT, IN VIEW OF SUPREME COURT, CONSTITUTES THE CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS,* 52 L. Ed. 2d 779. In *Gilmore v. Lynch,* 319 F. Supp. 105 (DC Cal. 1970) Affd. 404 U.S. 15, 30 L. Ed. 2d 142, 92 S. Ct. 250, the District Court, in a decision affirmed without opinion by the Supreme Court, has defined access to the Courts as encompassing "all means a *defendant* or *petitioner* might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him". Although most of the cases on this issue have involved state review procedures, the Supreme Court has indicated that the same principles are applicable to federal avenues of review. *See United States v. MacCollom,* 426 U.S. 317, 49 L. Ed. 2d 666, 96 S. Ct. 2086 (1976). Moreover, these cases involved prisoners, and for the most part were habeas corpus actions. Therefore, the common everyday Citizen's constitutional right of meaningful access to the Courts would seem to be a novel question and question of first impression.

CONCLUSION

For all these various reasons, this petition for certiorari should be granted. The Buchbinders Tax Court petition clearly met the unqualified requirements of Tax Court Rule 34(b)(4) and 34(b)(5) in that it clearly set forth clear and concise statements of the facts and clear and concise statements of each and every error, these statements of fact and assignments of error were distinctly and separately enumerated. The Administrative Procedures Act Title 5 of the United States Codes is the only source of protection that the American Citizen has against arbitrary governmental agency actions, if the scope of review mandated by Title 5 § 706 is viewed by the lower courts as meaningless the American Citizens are then stripped bare of any protection, and are reduced to victims rather than American Citizens.

Rules are meant to be useful guidelines for the purpose of maintaining uniformity and seeking the absolute truth of the matter, but, an unreasonable and arbitrary application of these rules results in grossly manifest injustices being wrought upon litigants peacefully seeking to resolve their disputes before the courts, and goes to defeat the entire purpose of creating a judicial branch of government. Cases that are resolved to judgement on mere concluded infractions of a rule and in total disregard of any evidentiary merits renders the laws meaningless writings much like fiction.

Likewise, litigants that are denied access to appellate courts on the pretext of misapplied sanctions, renders due process meaningless and thwarts proper adjudication of issues brought before these courts by petitioners seeking redress of grievance.

Considering the injury to Petitioners in this matter, the Buchbinders seek damages from the Government in the amount of $250,000.00

Respectfully submitted,

BRUCE BUCHBINDER
ELAINE BUCHBINDER
1178 Via Ferrari Drive
San Jose, California 95122
(408) 279-4054
Petitioners in Pro Se

DATED: July 30, 1997

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRUCE BUCHBINDER; ELAINE BUCHBINDER,	)	No.97-70092
Petitioners-Appellants,	)	IRS #17294-96
vs.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	ORDER
Respondent-Appellee.	)	(Filed May 12, 1997)

Before: FLETCHER, REINHARDT and FERNANDEZ, Circuit Judges

Appellee's motion to dismiss this appeal for failure to pay sanctions imposed in a previous appeal is granted. See Hymes v. United States, 993 F.2d 701 (9th Cir. 1993).

Appellee's motion for an extension of time to file the answering brief is denied as unneccessary.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions, other than a motion to reinstate accompanied by proof that the sanction has been paid, shall be filed or entertained in this closed docket.

mocal/5.6.97/kg

APPENDIX B

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

BRUCE AND ELAINE BUCHBINDER,	)	
Petitioner(s)	)	
v.	)	Docket No. 17294-96
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

ORDER OF DISMISSAL AND DECISION

Pursuant to the determination of the Court as set forth in its Bench Opinion rendered on October 28, 1996, in San Francisco, California, it is hereby

ORDERED that respondent's motion to dismiss for failure to state a claim upon which relief can be granted, filed September 30, 1996, is granted, it is further

ORDERED AND DECIDED that there are due from petitioners additions to tax for the taxable year 1982 as follows:

Sec. 6653(a)(1)	Sec. 6653 (a)(2)	Sec. 6661
$434	50% of the interest due on $8,676	$2,169

and that damages are due from petitioners which are hereby awarded to the United States in the amount of $7,500 pursuant to section 6673(a)(1), Internal Revenue Code of 1954, as amended.

/s/ Daniel J. Dinan
Daniel J. Dinan
Special Trial Judge

Entered: Dec. 13, 1996

APPENDIX C

Bench Opinion by Special Trial Judge Daniel J. Dinan Docket No. 17294-96 October 28, 1996

THE COURT: The Court has decided to render oral findings of fact and opinion in this case, and the following represents the Court's oral findings of fact and opinion in the case of Bruce Buchbinder; Elaine Buchbinder, Petitioners, versus Commissioner of Internal Revenue, Respondent, at Docket No. 17294-96.

This case is before the Court on respondent's motion to dismiss for failure to state a claim for relief (sic) filed on September 30th, 1996 pursuant to Rule 40. All rule references are to the Tax Court Rules of Practice and Procedure and all section references are to the Internal Revenue Code in effect for the year in issue.

Petitioners resided in San Jose, California at the time the petition was filed.

Respondent issued a notice of deficiency to petitioners dated May 16th, 1996. In the notice, respondent determined additions to tax for the year 1982 under Section 6653(a) in the amount of $434, under 6653(a)(2) in the amount of 50 percent of the interest due on an underpayment of tax of $8,676, and under Section 6661 in the amount of $2,169.

Petitioners filed with their petition on August 9th - excuse me, petitioners filed their petition on August 9th, 1996. The substance of the petition was that only an Article 3 judge should hear the case; that respondent was attempting to

impose on petitioners a direct tax not imposed by the Rule of Apportionment; that petitioners are not citizens of the United States and therefore are not taxpayers; that petitioners received no income subject to federal taxation; that petitioners were at all times natural born citizens of one of the several Sovereign Republican States of the Contiguous States United (called the United States of America) and are exempt from all direct taxes not applied by the Rule of Apportionment and all indirect taxes not applied by the Rule of Uniformity.

On September 30th, 1996, respondent filed a motion the dismiss for failure to state a claim upon which relief can be granted.

By order dated October 2, 1996, the Court ordered petitioners to file with the Court on or before October 15th, 1996 amended - an amended petition in which they were to set forth with specificity each error they allege was made by respondent in the determination of the deficiency and separate statements of every fact upon which petitioners based the assignment of each error.

The order further provided that the respondent's motion was calendared for hearing at the Trial Session of the Court commencing at 10:00 a.m., October 21st, 1996, in Courtroom 2-1408, Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California.

On October 15th, 1996, petitioners filed petitioners' amended petition for redetermination of erroneous conclusion of income tax deficiency and/or liability.

This case was called from the calendar for the Trial Session of the Court in San Francisco on October 21, 1996 and was recalled at 11:00 a.m. on October 28th, 1996, for hearing on respondent's motion to dismiss. The parties appeared and were heard.

In their amended petition filed October 15th, 1996, petitioners reiterate their claim that they are not subject to federal income taxes. Petitioners' amended petition includes inter alia the following allegations.

A. The herein involved notice is in error because it seeks to enforce on the Buchbinders a direct tax not imposed by the Rule of Apportionment. This is an abuse of the powers of the Commissioner and/or her delegate's office and seeks to abuse the integrity of this Court.

B. The Commissioner and/or her delegate has erroneously and arbitrarily concluded that the Buchbinders are citizens of the United States and subject to the jurisdiction thereof and are thus taxpayers subject to and - and/or liable for taxes levied by the United States Congress under subtitles (a) or (b) or Chapters 41, 42, 43, 44, or 45 of the Internal Revenue Code.

G. The Commissioner and/or her delegate has erroneously and arbitrarily attached the appellation of taxpayer to Bruce and Elaine Buchbinder in this action when no judicial determination related to said appellation has ever made (sic) by any competent judicial tribunal.

B-1. Petitioners Bruce and Elaine Buchbinder were born in one of the several states of the 48 Continental Sovereign Republican States United to American parents;

thus, the Buchbinders are natural born citizens of one of the several states of the Continental United States of America and not subject to the jurisdiction of the United States.

C-1. During the year 1982, Brook and Elaine - Bruce and Elaine Bookbinder never received any form of income subject to federal taxation whatsoever, nor any other form of income that would fall under the jurisdiction of the United States Tax Court with respect to the notice of deficiency procedures.

K-1. Petitioners Bruce and Elaine Buchbinder are and were at all times herein mentioned natural born citizens of one of the several Sovereign Republican States of the Contiguous States United (United States of America) and as such enjoy all the rights, privileges and immunities guaranteed by the compact known as the Constitution of the United States of America and the Amendments thereto. The Buchbinders are and were during the entire year 1982 state citizens by birth right (as opposed to a United States citizen or resident subject to the jurisdiction thereof) and are exempt or immune from all direct taxes not applied by the Rule of Apportionment and all indirect taxes not applied by the Rule of Uniformity.

Rule 40 provides that a party may file a motion to dismiss for failure to state a claim upon - upon which relief can be granted. We may grant such a motion when it appears beyond doubt that the parties adversary can prove no set of facts in support of a claim which would entitled him or her to relief. Conley vs. Gibson, 355 U.S. 41, 45-46, 1957; Price vs. Moody, 677 F.2d 676, 677, 8th Circuit, 1982.

Rule 34(b) (4) reguires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and any addition to tax in dispute.

Rule 34(b) (5) further requires that the petitioner - that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. Jarvis vs. Commissioner, 78 T.C. 646, 658, 1982.

The failure of a petition to conform with the requirements set forth in Rule 34 may be grounds for dismissal. Rules 34(a)(1), Rule 123(b).

In general, the Commissioner's determination in a notice of deficiency are presumed to be correct and the taxpayer bears the burden of proving that these determinations are incorrect. Rule 142(a); Welch vs. Helvering, 290 U.S. 111, 115, 1933.

Moreover, any issue not raised in the pleadings is deemed to have been conceded. Rule 34(B)(4); Jarvis, supra at 658, note 19; Gordon vs. Commissioner, 73 T.C. 736, 739, 1980.

The petition and amended petition filed in this case do not satisfy the requirements of Rule 34(b) (4) and (5). They do not assign error or allege facts in support of any justiciable claim. They contain nothing but tax protestor gibberish as noted in the previous quoted passages taken from the petitioners' petition and amended petition. See Abrams vs. Commissioner, 82 T.C. 403, 1984; Rowlee vs. Commissioner,

80 T.C. 1111, 1983; McCoy vs. Commissioner, 76 T.C. 1981, affirmed 696 F.2d 1234, 9th Circuit, 1983.

We see no need to address each and every one of petitioners' arguments. As it was stated by the Court of Appeals for the 5th Circuit, "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent. To do so might suggest that these arguments have some colorable merit". Crain vs. Commissioner, 737 F.2d 1417 at 1471, 5th Circuit, 1984.

Because petitioners have failed to state a claim upon which relief can be granted, we will grant respondent's motion to dismiss.

We turn now on our own motion to the award of a penalty against petitioners under Section 6673 (a).

Section 6673 (a) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000, whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless. A petition to the Tax Court is frivolous "if it is contrary to established law and unsupported by a reasonable colorable argument for change in the law." Coleman vs. Commissioner, 791 F.2d, 68 at 71, 7th Circuit, 1986.

Petitioners are not strangers to this Court. They have filed eight petitions with this Court in which they have raised their classic tax protestor arguments. This Court has repeatedly and consistently decided petitioners' cases adversely to them. The United States Court of Appeals for the 9th Circuit has repeatedly and consistently affirmed the

orders and decisions entered by this Court against petitioners. The Supreme Court of the United States has repeatedly and consistently denied petitioners' petitions for writs of certiorari.

Petitioners will not be deterred. They are again before this Court for the year 1982 and again raise their repeatedly and consistently rejected tax protestor nonsense. There can be no doubt that petitioners are incredibly crass tax protestors who have again visited upon this Court one of their many tax protestor nonsensicalities.

In view of the foregoing, we will exercise our discretion under Section 6673(a)(1) and require petitioners to pay a penalty to the United States in the amount of $7,500. Coleman vs. Commissioner, supra at 71-72; Crain vs. Commissioner, supra at 1417, 1418; Coulter vs. Commissioner, 82 T.C. 580, 584-586, 1984.

An order of dismissal and decision will be entered. This concludes the Court's oral findings of fact and opinion in this case.

APPENDIX D

Bruce and Elaine Buchbinder
c/o Bruce Buchbinder
1178 Via Ferrari Drive
San Jose, California 95122

Petitioners In Propria Persona (Sui Juris)

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

BRUCE BUCHBINDER; ELAINE BUCHBINDER,	)	Docket No. 17294-96
	)	
Petitioners,	)	PETITIONERS'
	)	AMENDED
v.	)	PETITION FOR
	)	REDETERMINATION
COMMISSIONER OF INTERNAL REVENUE,	)	OF ERRONEOUS CONCLUSION OF
	)	INCOME TAX
	)	DEFICIENCY
Respondent.	)	AND/OR LIABILITY
	)	

Petitioners Bruce Buchbinder and Elaine Buchbinder pursuant to Court Order of October 2, and relying on Haines v. Kerner (1972), 404 U. S. 519, Price v. Johnson (1948), 344 U. S. 266, plus others, in that "pro se," "pro per" litigants are not held to the same standards as attorneys appearing in court,

hereby amend petition for the redetermination of Commissioner's and/or her delegate's erroneous conclusion that the Buchbinders were at all times herein mentioned, deficient in and/or liable for the alleged Income tax/taxes implied in the arbitrary and caprecious notice of deficiency mailed to them, and thus subject to the alleged penalties. Petitioners Bruce and Elaine Buchbinder are informed and believe that the herein Notice of Deficiency, is in reality a notice of implied liability [1].

The alleged Income tax/taxes implied, and thus the alleged penalties in dispute are set forth by the Commissioner of Internal Revenue/her delegate in their Notice of Deficiency dated May 16, 1996 (copy attached hereto), and as the basis for the case petitioners allege as follows:

The deficiency and/or liability as arbitrarily and erroneously concluded by the Commissioner and/or her delegate are in income taxes implied and thus penalties which are based upon the erroneous presumption of an implied liability, in the following year for the following amounts:

Tax Year Ended	Increase	6653(a)(1)	6653 (a) (2)	6661
1982	434	See *a below		2,169

*a 50% of interest due on $8,676

all of which is here placed in dispute (including any penalties that are not readily appearent from the face of this notice) for the following clearly stated reasons:

---

[1] While Section 2 of the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, has redesignated the "Internal Revenue Code of 1954" "as heretofore, hereby, or hereafter amended" the "Internal Revenue Code of 1986," the year here involved (1982) precedes the Internal Revenue Code of 1986, and all code references, unless otherwise expressed are to the Internal Revenue Code of 1954.

HISTORICAL BACKGROUND

The subject matter involved in this case arose as a result of the Internal Revenue Service conducting an examination investigation of various partnerships. As a result of the Internal Revenue Service's examination of these partnerships, the IRS somehow concluded, amongst other things, that the investments were made solely for tax benefits with no genuine intention or expectation of realizing a profit. The Buchbinders are unaware of any findings by the examining investigator that all the investors, including but not limited to the Buchbinders, were the subjects of a federal income tax.

On February 1, 1983 Bruce Buchbinder invested in a partnership named Richard Deeds & Associates. Richard Deeds & Associates in turn, invested in two Barrister series named Barrister Equipment Associates, Series 111 and Barrister Equipment Associates, Series 112. On or about June 6, 1984, these partnerships fell under the scrutiny of the Internal Revenue Service. On September 25, 1989, a conference was held by the Tax Court with counsel for Barrister Associates and counsel for the Government. The purpose of the conference was to schedule a case for trial as a lead case. At this conference it was designated by the Tax Court Judge that Barrister Partnership, Series 115 would proceed as the lead case. A consolidated petition for Readjustment of Partnership Items was filed on November 17, 1989 on behalf of ALL the Barrister Partnerships. The lead case, Barrister Equipment Associates Partnership, Series 115 was docketed in Tax Court as Anderson Equipment Associates, et. al., at Docket No. 27745-89.

On November 15, 1995, Bruce Buchbinder withdrew from the lead case by filing a Motion to Withdraw and notifying

the Court of the same, the threshold issue being the issue of Personam Jurisdiction. On November 23, 1994, subsequent to Bruce Buchbinder's withdrawal in that case, and in consideration of the premises of the motion, Tax Court Special Trial Judge Robert N. Armen, Jr. issued an Order granting the motion and Bruce Buchbinder's withdrawal from the lead case.

On January 11, 1996, Bruce Buchbinder received a Notice of Final Partnership Administrative Adjustment regarding Barrister Equipment Associates, Series 111 for the year 1982, wherein the notice stated that the Internal Revenue Service had determined that there were adjustments to the partnership return as shown on an attached Schedule of Adjustments, Form 870-P, and further stated that if Bruce Buchbinder were the Tax Matters Partner and wanted to contest these aforementioned adjustments in court, Bruce Buchbinder had 90 days from the date the letter was mailed to file a petition for a readjustment of the partnership items with the United States Tax Court, and that if the Tax Matters Partner had not filed a petition by the 90th day, any other partner may petition the Tax Court after the 90th day, but on or before the 150th day. (Bruce Buchbinder not being the Tax Matters Partner in any of the herein referenced partnerships, therefore timely filed a petition with this Court on May 29, 1996, after the 90th day, but on or before the 150th day, pursuant to the notice of Final Partnership Administrative Adjustment mailed to him January 11, 1996).

On May 3, 1996, the Buchbinders received an examination letter from the Internal Revenue Service notifying them that the examination of Barrister Equipment Associates, Series 111, and Barrister Equipment Associates, Series 112 Partnerships had been completed and that since the examination of these partnerships affects the partnership, Richard Deeds &

Associates, in which Bruce Buchbinder was an investor, that Buchbinders individual return had been adjusted accordingly; subsequently thereto on May 15, 1996, Buchbinders received an arbitrary and capricious Notice of Tax Due on Federal Tax Return from the Commissioner and/or her delegate of the Internal Revenue Service for year 1982.

On May 16, 1996, petitioners received a Notice of Deficiency (Letter 5601) from the Internal Revenue Service, Western Region, addressed to Bruce and Elaine Buchbinder c/o Bruce Buchbinder for the tax year ended December 31, 1982, itemizing as a deficiency certain penalties herein contested, from Deborah S. Decker, Director, Ogden Utah Service Center on behalf of Commissioner, Internal Revenue Service.

THE BUCHBINDERS' CLEARLY STATED POSITION

This matter involves a case and controversy arising under Article I, Section 2, Clause 3, Article I, Section 8, Clauses 1 and 17, Article I, Section 9, Clause 4, and Amendment XVI of the Constitution of the United States of America. Therefore, the issues in this case can only be properly concluded under the provisions of Article III, Section 2, and Article VI, Section 2 of the Constitution of the United States of America, and this case is entitled to be treated as such. As a result of the constitutional nature of this case it requires a complete review by Judges completely endowed with the powers and immunities of Article III, Section 1 of the United States Constitution. Any Judge that would be unable to exercise the powers under Article III, Sections 1 and 2 of the United States Constitution should reasonably disqualify him or herself from making any decisions in this matter.

CLEAR AND CONCISE ASSIGNMENTS OF EACH AND EVERY ERROR OF COMMISSIONER'S CONCLUSIONS OF DEFICIENCY/LIABILITY (TAX COURT RULE 34 (b)(4))

Pursuant to the express provisions of Tax Court Rule 34 (b)(4) Petitioners are setting forth clear and concise separately enumerated assignments of each and every error, alleged by petitioners to have been committed by the Commissioner and/or her delegate in its arbitrary conclusions, with respect to the herein involved Notice of Deficiency. The specifics of Rule 34 (b)(4) are unqualified and include errors upon which the Commissioner has the burden of proof, and not merely mathematical mistakes. The errors set forth below go to the very heart of the presumed authority and/or jurisdiction of the Secretary of the Treasury, which places the burden of proof squarely upon the Secretary's purported delegate.

A. The herein involved notice is in error because it seeks to enforce on the Buchbinders a **"DIRECT TAX"** not imposed by the rule of apportionment, this is an abuse of the powers of the Commissioner and/or her delegate's Office, and seeks to abuse the integrity of this Court. These powers are being utilized by the office of the Commissioner and/or her delegate for the convoluted purposes of avoiding the Commissioner and/or her delegate's burden of proof.

B. The Commissioner and/or her delegate has erroneously and arbitrarily concluded that the Buchbinders are citizens of the United States and subject to the jurisdiction thereof, and are thus **"TAXPAYERS"** subject to and/or liable

for taxes levied by the United States Congress under Subtitles A or B or Chapters 41, 42, 43, 44, or 45 of the Internal Revenue Code [2].

C. Petitioners, Bruce and Elaine Buchbinder, are informed and believe that the Commissioner and/or her delegate has erroneously and arbitrarily concluded that the Buchbinders received "**TAXABLE INCOME**" during the year 1982.

D. Petitioners, Bruce and Elaine Buchbinder are informed and believe that the Commissioner and/or her delegate has erroneously and arbitrarily concluded that the Buchbinders during the year 1982 were engaged in a "**TAXABLE CHARGED ACTIVITY**" generating "**MEASURABLE INCOME**".

E. Petitioners, Bruce and Elaine Buchbinder are informed and believe that the Commissioner and/or her delegate has erroneously and arbitrarily concluded that the Buchbinders had incurred a liability for and/or are subject to the taxes imposed under Subtitles A or B or Chapters 41, 42, 43, 44 or 45 of the Internal Revenue Code and related regulations for the year 1982.

---

[2] Section 6211 of the Internal Revenue Code defines a deficiency as being a deficiency of taxes income, estate and gift taxes imposed under Subtitle A or B or Chapters 41, 42, 43, 44, or 45. Viewed in light of the most liberal construction the 90 day notice here involved completely fails to disclose any viable indication of which tax is being here asserted by the Commissioner or her delegate, other than the ambiguous statement "we have determined that there is a deficiency (increase) in your income tax as shown above".

F. The Commissioner and/or her delegate has erroneously and arbitrarily compiled, and is maintaining information regarding Bruce and Elaine Buchbinder, in the Internal Revenue Systems of

Records, designated to and for use by the Assistant Commissioner (International), Foreign Operations Division, and/or her officers or agents.

G. The Commissioner and/or her delegate has erroneously and arbitrarily attached the appellation of **"TAXPAYER"** to Bruce and Elaine Buchbinder in this action when no judicial determination relating to said appellation has ever made by any competent judicial tribunal.

H. The Commissioner and/or her delegate erroneously and arbitrarily implies that she is acting upon valid sources of information that Bruce and Elaine Buchbinder received **"TAXABLE INCOME"** during the year 1982.

I. The enforcement of the provisions of the Internal Revenue laws and/or the Internal Revenue Code has been delegated, by the Congress of the United States, to the Secretary of the Treasury. The Commissioner of the Internal Revenue Service and the Service Center Director has no power or authority other than that delegated to them by written delegation orders, regulations, treasury decisions, or the like. Thus, the Commissioner and/or her delegate has erroneously and arbitrarily concluded that she has broad discretion in this matter to issue the Notice of Deficiency to Bruce and Elaine Buchbinder for the year 1982.

J. The Commissioner and/or her delegate has erroneously and arbitrarily concluded that she had delegated

authority and/or jurisdiction to issue statutory 90 day notices of deficiency to Bruce and Elaine Buchbinder the petitioners herein.

K. The actions here involved, which have been taken by the Commissioner and/or her delegate, have erroneously and arbitrarily deprived the Buchbinders of certain procedural safeguards and Constitutional guarantees prescribed by Article I, Section 2, Clause 3 and Article I, Section 9, Clause 4, guaranteed to the Buchbinders, as Citizens of one of the several Sovereign Republican States of the contiguous States united, by the Constitutional compact of the United States of America.

L. The Commissioner and/or her delegate has erroneously and arbitrarily attached the appellation of "**TAX PROTESTER**" to Bruce and Elaine Buchbinder in this action when no judicial determination relating to said appellation has ever been made by any competent judicial tribunal.

STATEMENT OF FACTS
(Tax Court Rule 34(b)(5))

Pursuant to the provisions of Tax Court Rule 34(b)(5), and given consideration that these petitioners fully believes that it is the customary practice of the Tax Court to ignore the expression of the rules, petitioners are setting forth below clear and concise separately enumerated facts upon which they rely. Petitioners are fully aware that any facts upon which the Commissioner has the burden of proof is excepted, petitioners are also fully aware that the Commissioner's delegate will utilize any form of deception to escape its burden of proof. Therefore, petitioners are fully setting forth all the facts relied upon, regardless of the exception.

A-1. Petitioners, Bruce and Elaine Buchbinder are and were at all times herein mentioned, natural born Citizens of one of the several Sovereign Republican States of the contiguous States United (United States of America), and as such enjoy all the rights, privileges and immunities guaranteed by the compact known as the Constitution of the United States of America, and the Amendments thereto. The Buchbinders are and were during the entire year 1982 State Citizens by birthright (as opposed to a United States citizen or resident subject to the jurisdiction thereof), and are exempt or immune from all direct taxes not applied by the rule of apportionment, and all indirect taxes not applied by the rule of uniformity.

A-2. Petitioner Bruce Buchbinder was at all times, herein mentioned, a Citizen and resident of the Republic of the State of California, and, by virtue of Article IV, Section 2, Clause 1, U.S. Constitution, was also a Citizen of the United States, not subject to its jurisdiction, domiciled at 1178 Via Ferrari Drive, City of San Jose, State of California. Bruce Buchbinder is and was an American Citizen and resident by birthright, not living abroad, and exempt from a direct unapportioned tax.

A-3. Petitioner Elaine Buchbinder was at all times, herein mentioned, a Citizen and resident of the Republic of the State of California, and, by virtue of Article IV, Section 2, Clause 1, U.S. Constitution, was also a Citizen of the United States, not subject to its jurisdiction, domiciled at 1178 Via Ferrari Drive, City of San Jose, State of California. Elaine Buchbinder is and was an American Citizen and resident by birthright, not living abroad, and exempt from a direct unapportioned tax.

B-1. Petitioners, Bruce and Elaine Buchbinder were born in one of the several States of the 48 continental Sovereign Republican States United to American parents. Thus, the Buchbinders are natural born Citizens of one of the several States of the continental United States of America and not subject to the jurisdiction of the United States. As a result of the Buchbinders' natural birthright, the Buchbinders are not the subject of any United States Treaty, nor are the Buchbinders the subject of any United States Territorial Laws. The Buchbinders have never expatriated their Sovereign Republican State Citizenship and residence, including, but not limited to, the year 1982.

B-2. Petitioner Bruce Buchbinder was born in the State of New York, one of the several States of the 50 continental States United. Thus, Bruce Buchbinder is a natural born Citizen of one of the several States of the continental United States of America. As a result of Bruce Buchbinder's natural birthright, Bruce Buchbinder is not the subject of any United States Treaty, nor is Bruce Buchbinder the subject of any United States Territorial Laws. Currently, Bruce Buchbinder is domiciled in and resides at 1178 Via Ferrari Drive, City of San Jose, State of California and has been so domiciled since August of 1974. Bruce Buchbinder has never expatriated his American Citizenship and residence nor has he resided abroad during any period of his lifetime including the year 1982.

B-3. Petitioner Elaine Buchbinder was born in the State of California one of the several states of the 50 continental States United. Thus, Elaine Buchbinder is a natural born Citizen of one of the several States of the continental United States of America. As a result of Elaine Buchbinder's natural birthright, Elaine Buchbinder is not the subject of any United States Treaty,

nor is Elaine Buchbinder the subject of any United States Territorial Laws. Currently, Elaine Buchbinder is domiciled in and resides at 1178 Via Ferrari, City of San Jose, State of California and has been so domiciled since August of 1974. Elaine Buchbinder has never expatriated her American Citizenship and residence nor has she resided abroad during any period of her lifetime including the year 1982.

C-1. During the year 1982, Bruce and Elaine Buchbinder never received any form of **"INCOME SUBJECT TO FEDERAL TAXATION"** whatsoever, nor any other form of "income" that would fall under the jurisdiction of the United States Tax Court with respect to the Notice of Deficiency procedures.

D-1. Further, during the year 1982 Bruce and Elaine Buchbinder were not engaged in any activity upon which Congress has levied a tax under the provisions of Subtitles A or B or Chapters 41, 42, 43, 44, or 45 of the Internal Revenue Code and related regulations.

D-2. During the year 1982, Bruce Buchbinder earned his living as a consultant, doing business within the State of California, and all his earnings were within the State of California. During the year 1982, Bruce Buchbinder did not reside within any foreign country or within any territory of the United States. Thus, Bruce Buchbinder was not engaged in any activity upon which Congress has imposed a tax under the provisions of Subtitle A of the Internal Revenue Code and related regulations.

D-3. During the year 1982, Elaine Buchbinder was a housewife. During the year 1982, Elaine Buchbinder did not

reside within any foreign country or within any territory of the United States. Thus, Elaine Buchbinder was not engaged in any activity upon which Congress has imposed a tax under the provisions of Subtitle A of the Internal Revenue Code and related regulations.

E-1. During the year 1982 Bruce and Elaine Buchbinder were not engaged in any activity upon which Congress has levied a tax under the provisions of Subtitles A or B or Chapters 41, 42, 43, 44, or 45 of the Internal Revenue Code and related regulations.

F-1. The attached statutory 90 day Notice of Deficiency, Form 5601 is issued under the power and authority of the office of Associate Commissioner, Foreign Operations Division, Operations Examination Section. Respondent knows or reasonably should know that the Foreign Operations Division does not have jurisdiction over Bruce Buchbinder and Elaine Buchbinder under the deficiency procedures.

G-1. The Commissioner and/or her delegate erroneously represents petitioners Social Security account number as a Taxpayer Identifying Number, upper right hand corner statutory notice here involved.

H-1. During the year 1982, Bruce and Elaine Buchbinder never received any form of **"INCOME SUBJECT TO FEDERAL TAXATION"** whatsoever, nor any other form of "income" that would fall under the jurisdiction of the United States Tax Court with respect to the Notice of Deficiency procedures.

H-2. During the year 1982 Bruce and Elaine Buchbinder were not engaged in any activity upon which

Congress has levied a tax under the provisions of Subtitles A or B or Chapters 41, 42, 43, 44, or 45 of the Internal Revenue Code and related regulations.

I-1. The attached statutory 90 day Notice of Deficiency, Form 5601 is issued under the power and authority of the office of Associate Commissioner, Foreign Operations Division, Operations Examination Section. Respondent knows or reasonably should know that the Foreign Operations Division does not have jurisdiction over Bruce Buchbinder and Elaine Buchbinder under the deficiency procedures.

J-1. The attached statutory 90 day Notice of Deficiency, Form 5601 is issued under the power and authority of the office of Associate Commissioner, Foreign Operations Division, Operations Examination Section. Respondent knows or reasonably should know that the Foreign Operations Division does not have jurisdiction over Bruce Buchbinder and Elaine Buchbinder under the deficiency procedures.

K-1. Petitioners, Bruce and Elaine Buchbinder are and were at all times herein mentioned, natural born Citizens of one of the several Sovereign Republican States of the contiguous States United (United States of America), and as such enjoy all the rights, privileges and immunities guaranteed by the compact known as the Constitution of the United States of America, and the Amendments thereto. The Buchbinders are and were during the entire year 1982 State Citizens by birthright (as opposed to a United States citizen or resident subject to the jurisdiction thereof), and are exempt or immune from all direct taxes not applied by the rule of apportionment, and all indirect taxes not applied by the rule of uniformity.

L-1. Information regarding Bruce Buchbinder and Elaine Buchbinder is being arbitrarily maintained by a special unit of the Internal Revenue Service resulting in Bruce Buchbinder and Elaine Buchbinder being labeled with the groundless appellation of "Tax Protesters", and the use of certain numbers and codes peculiarly known to the Internal Revenue Service only. This special unit utilizes peculiar procedures against certain individuals that are not used against other individuals in similar circumstances, thus, arbitrarily depriving Bruce Buchbinder and Elaine Buchbinder of equal application of the laws.

L-2. Further, in this instance, the appellation "Tax Protester" is having general applicability and legal effect, and penalties attach. But, the criteria constituting "Tax Protester" has never been published in the Federal Register.

M-1. This appeal is not taken for the purposes of delay, nor to impede the administration of the Federal Revenue Laws.

N-1. Because of the complex issues that are involved in this case Petitioners do not want this case treated as a small tax case. Thus, petitioners do not want this case assigned to a Special Trial Judge, petitioners are entitled as a matter of constitutional right to be heard by a Judge with the powers and immunities guaranteed by Article III of the United States Constitution, and hereby demand same.

O-1. The undersigned state that the above separately enumerated statements are true and correct to the best of their knowledge, except for those stated on information and belief and as to those they believe them to be true, further, it is stated

that they are not subject to nor liable for the alleged Tax Measured by Taxable Income arbitrarily implied to be due and thus the penalties by the Commissioner and/or her delegate in its Notice of Deficiency.

P-1. This petition is undersigned by the petitioners and certify that to the best of their knowledge, information, or belief, that there are good grounds to support it; that it is not frivolous, and that it is not interposed for delay.

This petition is not to be construed as Bruce and Elaine Buchbinder's challenge to the Commissioner and/or her delegate's mathematical expertise as evidenced upon the alleged Notice of Deficiency, or any attachments thereon, that are here involved. The Commissioner and/or her delegates mathematical expertise is irrelevant to its lawfully delegated authority and powers, which are the issues herein stated. Instead, this petition challenges the validity of the Notice of Deficiency here involved, the substantive foundational basis relative thereto, and the delegated authority of the purported Commissioner and/or her delegate of the Ogden, Utah Service Center of the Internal Revenue Service to issue 90 day notices of deficiency to Bruce and Elaine Buchbinder.

The relevant material documentation necessary for the Buchbinders to substantially oppose any motions for summary judgements, and/or to properly prepare their cause for trial on the merits of the issues being brought before this Court by the Buchbinders, are in the exclusive possession and control of the Internal Revenue Service. The Buchbinders have no other way known to them, at this late hour, to obtain this material documentation than through the process of discovery. Thus, the Buchbinders respectfully request that this Court consider ordering a convenient discovery schedule.

WHEREFORE, in consideration of the above, petitioners respectfully request that this Court Abate or Vacate the alleged Notice of Deficiency here involved as being arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. That this Court find that the alleged 90 day Notice of Deficiency here involved is contrary to constitutional right, privilege, or immunity. That this Court find that the alleged 90 day notice here involved is an abuse of the agency's lawfully delegated powers, and in excess of statutory jurisdiction, authority, or limitations, and short of statutory right. That this Court find that the alleged 90 day notice here involved is unsupported by any substantial evidence, and unwarranted by the facts. That this Court find that the alleged 90 day notice here involved is unsupported by any substantial evidence viewed in light of the whole record.

That in making these findings this Court give due regard to the rule of prejudicial error, and that these findings are made on the whole record relating to the asserted basis for the alleged Notice of Deficiency issued to Bruce and Elaine Buchbinder for the year 1982.

DATED: October 14, 1996 Respectfully Submitted

_____

Bruce Buchbinder, Petitioner
In Propria Persona

_____

Elaine Buchbinder, Petitioner
In Propria Persona